

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re:

SAMIA EL-MOSLIMANY

Debtor

Case No. 18-14820-CMA  
Chapter 7

**MOTION TO AVOID JUDGMENT LIEN**

COMES NOW the debtor, through counsel, and moves the Court for an order avoiding the judgment lien of Hayat Sindi on the Debtor's interest in the real property at 2655 SW 151st PL, Burien, WA 98166 (the "Property"), legally described as Lot 12, Seahurst West, according to the plat thereof recorded in volume 80 of plats, page 45, records of King County Washington. This motion is made pursuant to Bankruptcy Code §522(f) and (h), and is supported by the Declaration of Samia El-Moslimany and the Declaration of Aziza Alyousef.

**PROCEDURAL BACKGROUND**

By separate motion, the Debtor has also moved for an order of abandonment of the Property, and asked the Court to rule on the trustee's boilerplate objection to exemptions (ECF #11), and Hayat Sindi's objection to exemptions (ECF #18) at the same time.

**STATEMENT OF FACTS**

Believe it or not, this is a case about the struggle for women's rights in Saudi Arabia. The principal unsecured creditor, Hayat Sindi, is a very wealthy, powerful, and

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1 well connected member of the Saudi establishment. The second-position secured  
2 creditor, Aziza Alyousef, is a campaigner for women's rights in Saudi Arabia. The  
3 Debtor, Samia El-Moslimany, is a dual U.S. - Saudi citizen. She was arrested for driving  
4 a car in Saudi Arabia. She met Ms Alyousef in connection with her arrest. They became  
5 dear friends.

6 Hayat Sindi had an affair with Ms El-Moslimany's husband. She sought to  
7 become his second wife. (A Saudi man may have up to four wives at once.) In her hurt  
8 and rage, Ms El-Moslimany made statements about Hayat Sindi that Hayat Sindi  
9 thought were actionable. She brought suit in Federal District Court in Massachusetts,  
10 and ultimately obtained a judgment, described below.

11 In the meantime, cut off from support from her husband, and facing huge legal  
12 bills in addition to her living expenses, Ms El-Moslimany turned to Ms Alyousef for  
13 support, in the form of loans. Those loans were documented in part by three promissory  
14 notes, in the amounts of \$346,666, \$100,000 and \$26,666 (a total of \$472,847); and are  
15 secured by a second-position deed of trust on the Property. In addition to the loans  
16 documented by the notes, Ms Alyousef has advanced approximately \$100,000 to Ms El-  
17 Moslimany by wire transfers and in cash. These advances are secured under the future  
18 advances clause in the Alyousef Deed of Trust. These advances are documented as set  
19 forth in the Declarations of Samia El-Moslimany and Aziza Alyousef, filed herewith.  
20 The total amount secured by the Alyousef Deed of Trust is \$574,537.

21 Anyone who doubts that the loans from Aziza Alyousef to Samia El-Moslimany  
22 are real should consider that, since before the Hayat Sindi defamation suit was filed in  
23 2013, Ms El-Moslimany has had virtually no income. Yet for the past six years, she has  
24 paid her mortgage and her living expenses, supported her mother, and paid out  
25 hundreds of thousands of dollars in attorney fees. Where did these funds come from, if

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1 not Ms Alyousef's loans?

2 The Property is the Debtor's principal residence. She owns an undivided 50%  
3 interest. Her mother, Ann El-Moslimany, owns the other 50% interest and also resides  
4 in the Property. The Debtor scheduled the value of the Property at \$1,130,000, and the  
5 value of her one-half interest at \$565,000<sup>1</sup>. The Trustee's realtor has estimated the value  
6 of the Property to be \$1,050,000 to \$1,200,000.

7 Washington Federal Savings & Loan holds a first deed of trust on the Property to  
8 secure a mortgage debt of \$351,371.41 (\$355,436.76 according to the Washington Federal  
9 motion for relief from stay).

10 The Alyousef Deed of Trust was recorded on November 7, 2016 and secured a  
11 promissory note in the principal amount of \$346,666. In addition, the Alyousef Deed of  
12 Trust secures future advances by Alyousef to the Debtor. These future advances include  
13 a promissory note dated May 28, 2017 in the principal amount of \$100,000; a promissory  
14 note in the principal amount of \$26,666 dated July 25, 2019, and additional advances  
15 (which are all documented in the declarations of the Debtor and Aziza Alyousef, filed  
16 herewith), which bring the total secured by the Alyousef Deed of Trust to \$574,537.  
17 Interest continues to accrue on both the Washington Federal and Alyousef Deeds of  
18 Trust.

19 Hayat Sindi obtained a judgment of over \$1.5 million against the Debtor in  
20 Federal District Court in Boston, Massachusetts, on October 6, 2016. This judgment<sup>2</sup> was  
21 docketed in the Federal District Court for the Western District of Washington on January  
22 3, 2017, under case number 2:17-mc-00001. The Debtor appealed this judgment, and the  
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24 <sup>1</sup> This is without discount for a fractional interest in the property.

25 <sup>2</sup> This judgment is denominated a "First Amended Judgment".

1 amount of the judgment was reduced on appeal. During the appeal, however, all  
2 collection action was stayed. A "Second Amended Judgment" dated August 17, 2018,  
3 was registered as a foreign judgment in King County Superior Court on September 7,  
4 2018, and recorded in the King County land records on September 25, 2019.

5 The Debtor has claimed the Property as exempt pursuant to Washington law in  
6 the amount of \$125,000. Here is a calculation of the equity in the Debtor's interest in the  
7 Property:

8	Gross value: .....	\$1,130,000
9	Less Projected costs of sale at 8% .....	- \$90,400
10	Less Washington Federal deed of trust .....	- \$355,437
11	Less Alyousef Deed of Trust .....	- \$574,537
12	Net proceeds .....	\$109,563
13	Estate's 50% share of net proceeds .....	\$54,781
14	Less Debtor's homestead exemption .....	- \$125,000
15	Net Equity (negative) .....	- \$70,219

16 Thus, the sum of the encumbrances on the Property plus the Debtor's homestead  
17 exemption exceed the value of the Debtor's interest in the Property. As such, there is no  
18 equity in the Property for the Hayat Sindi judgment lien to attach to, and the judgment  
19 lien is thus avoidable.

20 Even if the Court finds that the sum of all unavoidable liens on the Property plus  
21 the Debtor's homestead exemption is less than the value of the Property, such that there  
22 is some equity for the Sindi judgment lien to attach to, the Court should avoid the  
23 judgment lien "to the extent" it impairs the Debtor's homestead exemption, leaving only  
24 so much of the judgment lien as is supported by demonstrable equity in the Property.

25 *East Cambridge Sav. Bank v. Silveira (In re Silveira)*, 141 F.3d 34 (1<sup>st</sup> Cir. 1998).

## 26 **AUTHORITY AND ARGUMENT**

27 **Lien Avoidance Based on Impairment of Exemption.** Pursuant to Bankruptcy  
28 Code §522(f), a debtor may avoid a judicial lien on exempt property, such as a  
homestead, to the extent the lien impairs an exemption to which the debtor is entitled. A

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1 lien impairs an exemption to the extent the amount of the lien, plus the amount of all  
2 other liens on the property, plus the amount of the exemption, exceeds the value of the  
3 property. That is the case here, as the amount of the debt secured by the first deed of  
4 trust and the second deed of trust, plus the exemption claim, exceeds the value of the  
5 Property by over \$30,000. The relevant time to measure the value of the property is as of  
6 the petition date. *Culver v. Chiu (In re Chiu)*, 266 B.R. 743 (9<sup>th</sup> Cir. BAP 2001).

7 **Lien Avoidance Based on Trustee's Avoiding Powers.** Pursuant to Bankruptcy  
8 Code §522(h), the debtor may avoid a lien which is avoidable pursuant to Bankruptcy  
9 Code §547, if the trustee does not do so. Pursuant to R.C.W. 6.13.090, a judgment  
10 becomes a lien on homestead property from the time the judgment is recorded in the  
11 land record of the county where the homestead is located. Thus, if a judgment is first  
12 recorded in the land records within 90 days before the petition date, it constitutes a  
13 preferential transfer and may be avoided.

14 In this case, the Sindi judgment was purportedly recorded in the King County  
15 land records on two separate occasions: Once, on February 27, 2017 by the recording of a  
16 "Notice of Lien Against Homestead Property", which referenced the original District of  
17 Massachusetts judgment; and again on September 25, 2018, by the recording of a foreign  
18 judgment (the "Second Amended Judgment") registered in King County Superior Court.  
19 The petition herein was filed on December 20, 2018. Thus, if the February 2017 lien  
20 filing is ineffective, the lien was perfected against the Property within the preference  
21 period, and is avoidable.

22 The February 2017 lien recording was defective in three respects. First, it  
23 contained an inaccurate parcel number, 7648000120. The correct parcel number is  
24 7638000120. It also did not contain a legal description. There was no way to tie the  
25 judgment to this particular parcel of land.

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1 Second, the September 2017 recording was based on a judgment docketed in the  
2 Federal District Court, not the Washington Superior Court. Under 28 U.S.C. §1962, a  
3 federal judgment is a lien on property of the judgment debtor to the same extent, and  
4 not more, than a judgment of a state court of general jurisdiction. The statute goes on to  
5 say:

6 Whenever the law of any State requires a judgment of a State court to be  
7 registered, recorded, docketed or indexed, or any other act to be done, in a  
8 particular manner, or in a certain office or county or parish before such lien  
9 attaches, such requirements shall apply only if the law of such State  
authorizes the judgment of a court of the United States to be registered,  
recorded, docketed, indexed or otherwise conformed to rules and  
requirements relating to judgments of the courts of the State.

10 Since under Washington law, a judgment must be docketed in the Superior Court before  
11 recording, and Washington law permits a federal judgment to be docketed in the  
12 Superior Court, so too, this federal judgment had to be docketed in Superior Court  
13 before recording. See *RCF Techs., Inc. v Rubbercraft Corp. (In re RCF Techs., Inc.)* 285 BR  
14 531 (Bankr. SD GA 2001). Thus, the February 2017 recording was ineffective.

15 Third, the judgment now sought to be enforced, the "Second Amended  
16 Judgment", superceded the prior judgment. It was not rendered until August 17, 2018  
17 and not recorded until September 25, 2018, less than 90 days pre-petition. Therefore,  
18 avoidance of the Second Amended Judgment leaves creditor Hayat Sindi with no  
19 judgment lien at all.

## 20 CONCLUSION

21 There is no equity in the Property for the Sindi judgment lien to attach to. In  
22 addition, the judgment lien was not perfected until less than 90 days pre-petition.  
23 Therefore, the judgment lien should be avoided in its entirety.

24 Dated: August 3, 2019

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26 /s/ Donald A Bailey

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